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HONOURABLE SRI JUSTICE B.PRAKASH RAO

WRIT PETITION NOs:19765 of 1996 and 19545 of 1999

DATED: 19-07-2006

W.P.No.19765 of 1996:

Between:

M/s.Shriram Fuel Injection Industries, (Formerly known as Sriram Diesel Injection Industries), a Division of Jay Engineering Works Ltd., Balanagar, Hyderabad, rep.by its General Manager

..... PETITIONER

AND

1. The Addl.Industrial Tribunal-cum-Addl.Labour Court, 1st Floor, Chandra Vihar, M.J.Road, Hyderabad and 2 others.

.....RESPONDENTS

AND

W.P.No.19545 of 1999:

Between:

M.Dharmulu

..... PETITIONER

AND

1. The Addl.Industrial Tribunal-cum-Addl.Labour Court, 1st Floor, Chandra Vihar, M.J.Road, Hyderabad and another.

.....RESPONDENTS

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COMMON ORDER:

Heard Sri P.Nageswara Sree, learned counsel appearing for the petitioner in the first writ petition and Sri A.K.Jayaprakash Rao, learned counsel appearing for the petitioner in the second writ petition. Same counsel appeared as respondents in the opposite respective writ petitions.

2. Since these two writ petitions are filed assailing the same award, they have been taken up together for disposal.

3 . For convenient sake, the petitioner being called as Management, whereas the contesting respondent is called as worker.

4. The few facts, which are necessary for disposal of these petitions, are that the worker has been working at the relevant point of time as Senior Grade Supervisor and drawing a salary of Rs.2,882-40 ps. per month and as many as nine workmen worked under him. However, having regard to the complaint lodged by the Manager concerned on 08-07-1990 about a theft of certain article belonging to the Management, on initiating disciplinary proceedings, the Management has passed the orders of discharge on 23-08-1990 for loss of confidence. There is no dispute to the effect that the worker was initially appointed as a worker in the year 1966 and subsequently, he was given two promotions, and ultimately, serving as Senior Grade Supervisor.

5. Challenging the said order of discharge, the worker raised a dispute under Section 2-A of the Industrial Disputes Act, which was taken up by the Labour Court as I.D.No.78 of 1994. During the course of trial before the Labour Court, the Management examined M.W.1 and M.W.2 and marked Exs.M-1 to M-27, whereas on behalf of the worker W.W.1 was examined and marked Exs.W-1 to W-11. On a consideration of the entire material and evidence on record, the Labour Court passed the award, which is impugned in these two writ petitions, ultimately, holding that the impugned action against the worker is not sustainable, and in spite of ordering reinstatement, directed that the worker shall be paid wages for three years with all the attendant benefits. Hence, these two writ petitions one by the Management and another by the worker.

6 . Sri P.Nageswara Sree, learned counsel appearing on behalf of the Management, *interalia* raised two submissions one to the effect that the contesting respondent, who was titled as worker, do not come within the definition of Section 2 (s) of the Industrial Disputes Act, 1947 (for brevity 'the I.D.Act), having regard to the nature of post held by him and also the duties. Further, even in regard to the orders of discharge on the loss of confidence, no enquiry as such is required since no action is being taken on any imputation or on the alleged ground of theft or otherwise.

7. Sri A.K.Jaya Prakasha Rao, learned counsel appearing on behalf of the worker, submits that the tribunal has rightly held that the contesting respondent is not a worker by taking into consideration the nature of duties. Further, even taking any action of termination on a point as to the loss of confidence would amount to attribution, which certainly calls for any enquiry and without which all the proceedings would be illegal.

8. Having considered the submissions made on both sides in detail and also on perusal of the entire material on record, the questions, which arise for consideration, are as to:

1) Whether under the facts and circumstances of the case the contesting respondent comes within the definition of Worker under Section 2 (s) of the I.D.Act;

2) Whether under the facts and circumstances of the case the orders of discharge on the ground of loss of confidence is sustainable; and

3) Whether the relief as granted to the worker merely awarding three months salary is justified and whether the worker is entitled to reinstatement with all such benefits.

9 . As stated above, there is no dispute in regard to the chequered events leading to the raising of the dispute at the instance of the respondent-worker and against the orders of discharge dated 23-08-1990 on the ground of loss of confidence. *Prima-facie*, there is also no serious dispute in regard to the fact

that prior to the issuance of said orders of discharge, there was no enquiry or not even a show cause notice given to the respondent-worker. In fact, the orders of discharge dated 23-08-1990 was preceded by a complaint by the Manager concerned on 08-07-1990 as a theft being committed where two workers were sought to be blamed. During the course of enquiry, it was revealed that the said workers raised a point against the respondent-worker herein making responsible for such theft, and therefore, it is stated on behalf of the Management that the theft reposed to discharge on the ground of loss of confidence. Be that as it may, where any action is being taken directly on the allegation of theft or even otherwise on the ground of loss of confidence, it certainly makes a clear attribution against any employee or worker of a serious nature and therefore any action inconsequence or on such attribution, cannot be taken without a proper enquiry and on a proper opportunity being provided. The Management cannot simply try to rest its action on the ground of loss of confidence and terminate the services, and the impugned action is nothing but an out come of the complaint given on 08-07-1990 and a point was being raised against the respondent-worker. In view of the same, it is held that the impugned action, as rightly held by the Labour Court, is unsustainable and liable to be set aside.

10. Coming to the main question that whether the respondent is a worker or not and is entitled to invoke the provisions of I.D.Act,

it is seen that on behalf of the Management several documents were pressed into evidence to show that the entire duties discharged by the respondent-employee would virtually amount to the manager, and further, the employee himself is drawing a salary of Rs.2,882-40 ps. per month i.e., over and above the limitation as prescribed under Section 2 (s) (4) of the I.D.Act i.e., more than 1,600/-, and therefore, he would not be called as a worker. It is seen from the record that all the duties as pointed out are only of supervisory in nature. The definition under Section 2 (s) of the I.D.Act draws a clear distinction in between the supervisory, managerial and administrative work. Managerial or administrative duties may include a supervisory nature but a supervisory duty would not straight away fall in the managerial or administrative responsibilities. Necessarily, a clear distinction has to be drawn between mere supervisory duties and managerial and administrative duties. Certainly, the managerial and administrative stand a step far above that of the supervisory. Any employee or worker irrespective of his cadre certainly would have to have the supervisory duties, but certainly not that of managerial or administrative duties. Merely because under a worker another 8, 9 workers and other supervisory are posted, that itself would not constitute managerial or administrative duties as such. Except pointing out those duties, the management totally failed to give any positive material to show that the respondent is connected with

managerial or administrative duties. On the basis of above, the Labour Court has rightly come to the conclusion that the duties of the workman are only supervisory but not as managerial or administrative. Having regard to such fact and more so in the absence of any other material forthcoming on behalf of the management, this Court has no power to accept the submission made on behalf of the management. Hence, it is held that the respondent is a worker and is entitled to all the benefits. As regards the submission made on behalf of the worker in regard to the quantum of punishment is concerned, having held that the order of discharge is not sustainable, he would be straight away to reinstate with all benefits. However, the Labour Court, by taking into account the evidence with supported reasons, has held that since the respondent is doing other business subsequent to the said discharge, he would not be entitled to normal reinstatement with all the back wages, and therefore, the same was restricted to three years. Having regard to the same, I do not find any justification to modify the said relief also. Even otherwise, having regard to the principles as laid down in **V.Ramana v. A.P.SRTC and others**[1], on either of the grounds at the instance of the management or that of the worker, this Court would not inclined to reconsider the findings as arrived at by the Labour Court and come to any different conclusion, more so, on the factual matrix.

12. Both the Writ Petitions fail and are accordingly dismissed. No costs.

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19th July, 2006

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[1] (2005) 7 SCC 338